



## **Raising a concern with the Commissioner**

Responsible Manager	Chief Operating Officer
Next Review Date	April 2022; then annually.
Last Review Date	July 2021
Version	6.0

## **Raising a concern with the Commissioner**

This policy sets out our approach when the Older People's Commissioner for Wales ("the Commissioner") is contacted by a worker from another organisation who is worried about wrongdoing where they work and wants to raise a concern and report it, or 'blow the whistle'.

### **The functions of the Commissioner**

The Commissioner's statutory functions are set out in the Commissioner for Older People (Wales) Act 2006 and include:

- Promoting awareness of the rights and interests of older people in Wales;
- Promoting the provision of opportunities for and challenging discrimination against older people in Wales;
- Encouraging best practice in the treatment of older people in Wales; and
- Reviewing the adequacy and effectiveness of law affecting the interests of older people in Wales.

### **Raising a concern**

All of us, at one time or another have concerns about what is happening at work. Usually these are easily resolved. However, when the concern feels serious because it is about a possible fraud, danger, inappropriate/unprofessional behaviour or harm that might affect others or the organisation itself, it can be difficult to know what to do.

You may be worried about raising such a concern and may think it best to keep it to yourself, perhaps feeling it's none of your business or that it's only a suspicion. You may feel that raising the matter would be disloyal to colleagues, managers or to the organisation. You may decide to say something but find that you

have spoken to the wrong person or raised the issue in the wrong way and are not sure what to do next.

It is good practice for employers to have their own internal whistleblowing procedures, which should explain how you can raise any concerns. If your employer does have such procedures you should follow them, unless there is a compelling reason not to do so.

The Public Interest Disclosure Act 1998 (PIDA) recommends that workers raise concerns with their employer in the first instance and we endorse this; however, there is no legal requirement to do so. It is recognised that there can be legitimate reasons why a worker would want to raise their concerns outside of their workplace.

### **What is 'whistleblowing'?**

'Whistleblowing' refers to a disclosure of information by a worker who has a reasonable belief that it tends to show one or more of the following:

- A criminal offence has been committed or is likely to be committed; and/or
- A person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; and/or
- A miscarriage of justice has occurred, is occurring or is likely to occur; and/or
- The health or safety of any individual has been, is being or is likely to be endangered; and/or
- The environment has been, is being or is likely to be damaged; and/or
- Information tending to show any matter above has been, is being or is likely to be deliberately concealed.

For example, such concerns may include inappropriate behaviour towards or ill treatment of a patient/resident/client/customer by a member of staff; a breach of any statutory code of practice; unfair

discrimination in the provision of services; or unprofessional conduct or conduct below recognised and established standards of practice.

## **Protection for whistleblowers**

PIDA offers protection to workers who blow the whistle, provided that they do so in one of the ways set out in PIDA (known as making a protected disclosure). PIDA applies to most employees and includes those employed on a temporary basis or through an agency.

Workers have the right not to be subjected to a detriment by their employer as a result of blowing the whistle. A worker who is subjected to a detriment on the grounds that they made a protected disclosure can take their employer to an Employment Tribunal to seek redress.

## **Making disclosures to the Commissioner**

The Commissioner is a 'prescribed person' under PIDA for matters relating to the rights and wellbeing of older people in Wales.

This means that a worker may gain protection as a whistleblower under PIDA where the disclosure is made to the Commissioner, provided that the worker making the disclosure reasonably believes that it falls within the remit of the Commissioner and that the information disclosed and any allegations contained in it are substantially true.

The Commissioner's overriding concern is to protect the public interest. The Commissioner is not required to consider whether a disclosure qualifies for protection under PIDA and will not be able to provide advice on this. It would ultimately be for an employment Tribunal to determine whether an individual has the protection under PIDA. The Commissioner's role is to consider the matters disclosed to it.

PIDA does not require the Commissioner to investigate every disclosure received. The Commissioner can only investigate disclosures which fall within the scope of the Commissioner's

statutory functions and within the parameters of the Commissioner's statutory powers.

## **The Commissioner's approach for dealing with concerns**

### 1. Stage 1

We encourage all individuals to contact [Protect](#) in the first instance for independent and confidential advice. Protect may be able to help you to identify the correct prescribed person under PIDA. The Commissioner cannot provide advice on the scope of whistleblowing protection under PIDA.

### 2. Stage 2

If a worker approaches us wishing to raise a concern, we will first check whether we can accept it. This will involve:

(i) Determining whether the subject matter of the concern is something which falls within the statutory functions of the Commissioner; and

(ii) Asking procedure-related questions to establish at which stage the disclosure is at and whether any other public bodies are investigating the matter.

The worker will be notified whether we can accept the disclosure. If we are not able to accept the disclosure, we recommend that the individual contacts Protect for further advice.

### 3. Stage 3

If we decide that we can accept the disclosure, we will contact the worker to arrange a disclosure interview.

### 4. Stage 4

After the interview we will write to the worker explaining what we plan to do with the disclosure. We can only investigate

the substance of a disclosure on the basis of the Commissioner's statutory powers.

Any steps we take must be pursuant to the discharge of the Commissioner's statutory functions.

The Commissioner will consider referring the concern to another agency, regulator or (in the case of criminal allegations) to the police if it considers it appropriate or necessary to do so.

### **What action can the Commissioner take in relation to concerns?**

The Commissioner's statutory functions and powers are set out in the Commissioner for Older People (Wales) Act 2006 and The Commissioner for Older People in Wales Regulations 2007. <http://www.olderpeoplewales.com/en/about/commissioners-role/legal-powers.aspx> The Commissioner can only act within the scope of these functions and powers.

In certain circumstances, the Commissioner may have discretion to publish a report with its findings and make recommendations. The Commissioner does not have the power to take enforcement action against employers.

If you suspect that an older person is at risk of harm, we recommend that you contact your Local Authority and ask to make a safeguarding referral with immediate effect. Contact details for Local Authority adult protection teams are available at: [http://www.olderpeoplewales.com/en/adult\\_protection/adult-protection-in-wales/adult-protection-contacts.aspx](http://www.olderpeoplewales.com/en/adult_protection/adult-protection-in-wales/adult-protection-contacts.aspx)

### **Confidentiality**

Any information received by the Commissioner will be treated sensitively and the Commissioner will investigate matters raised under this policy in a responsible manner.

Workers may contact us to raise their concerns anonymously if they wish. However, it is harder to investigate concerns if we cannot ask follow-up questions.

We therefore do not encourage concerns to be raised anonymously with the Commissioner, although we will accept anonymous disclosures.

### **Commissioner's contact details for raising a concern**

Address: Cambrian Buildings, Mount Stuart Square, Cardiff, CF10 5FL

Phone: 03442 640 670 or 02920 445030

E-mail: [ask@olderpeoplewales.com](mailto:ask@olderpeoplewales.com)

### **Other contact details**

#### *Protect*

The independent charity Protect can confidentially talk you through your options and help you raise a concern about malpractice at work.

Phone: 020 3117 2520

E-mail: [whistle@protect-advice.org.uk](mailto:whistle@protect-advice.org.uk)

Website: [www.protect-advice.org.uk](http://www.protect-advice.org.uk)

#### *Union or Professional Body*

You can also contact your union or professional body (where applicable) for advice.

#### *Other prescribed persons under PIDA*

An updated list of prescribed persons is maintained at:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

## Feedback and Monitoring

The Commissioner is dedicated to achieving the highest standards possible. We recognise that this requires us to review how we have dealt with concerns, to enable us to identify trends and areas for improvement so that we can continue to improve our service. We may therefore maintain records of correspondence, telephone calls, interview notes and evidence collected for this purpose.

We welcome feedback from individuals who have raised complaints with us, either in writing or by e-mail.

Anybody who is dissatisfied with the way in which their concern was dealt with under this policy may refer to our Complaints Policy, which is available on our website.

## Raising concerns dos and don'ts

If you are concerned about wrongdoing where you work:

<b>Do:</b>	<b>Don't</b>
Make an immediate written record of your concerns noting all relevant details such as dates, names and times.	Do nothing.
Check whether your employer has policies and procedures in place for whistleblowing (most employers do) and follow them. Pass on your suspicions to someone with the appropriate authority and experience.	Be afraid of raising your concerns. Your employer must not victimise you if you raise your concerns. Your employer must treat any matter you raise sensitively and confidentially.
Deal with the matter promptly if you feel that your concerns are justified.	Approach or accuse any individuals directly or try to investigate the matter yourself.
	Pass on your suspicions to anyone who does not have the proper authority.

